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Human rights situations that require the Council's attention

Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Marzuki Darusman*

Summary

In the present report, submitted pursuant to Human Rights Council resolution 25/25, the Special Rapporteur reflects on the latest developments in relation to the situation in the Democratic People's Republic of Korea over the past year. While initially the authorities of the Democratic People's Republic of Korea made a number of welcome gestures towards increased cooperation with the United Nations human rights system and bilateral partners, those openings have not been sustained, nor borne fruit.

The main focus of the report is the development of a multitrack strategy aimed at addressing the issue of international abductions, enforced disappearances and related matters, as recommended by the commission of inquiry on the situation of human rights in the Democratic People's Republic of Korea. By means of such a strategy, the Special Rapporteur seeks to maintain momentum on, and the visibility of, the issue in the international arena, and thereby sustain continuous and targeted pressure on the authorities of the Democratic People's Republic of Korea to resolve the issue to the satisfaction of victims, their families and the international community. The support of all relevant stakeholders in the implementation of this strategy will be paramount.

* Late submission.

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I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea pursuant to Council resolution 25/25.

2. Retrospectively, 2014 has been a landmark year for the international community's collective engagement on human rights in the Democratic People's Republic of Korea and its efforts to bring relief and justice to the long-suffering people of the country. The report of the commission of inquiry on the situation of human rights in the Democratic People's Republic of Korea, presented to the Human Rights Council in March 2014, enabled the revelation of the truth as to the magnitude and gravity of the human rights violations committed over several decades by the Democratic People's Republic of Korea.

3. Sadly, the situation on the ground has not changed since the release of that report. Rather than responding seriously and substantively to the findings and recommendations of the commission of inquiry, the Government of the Democratic People's Republic of Korea has spared no effort in seeking to undermine the credibility of the report. While initially the authorities of the Democratic People's Republic of Korea made a number of welcome gestures towards increased cooperation with the United Nations human rights system and bilateral partners, including meeting with the Special Rapporteur for the first time in New York and conditionally inviting him to visit the country, those openings have not been sustained, nor borne fruit.

4. The main focus of the present report is the development of a strategy aimed at addressing the issue of international abductions, enforced disappearances and related matters, as recommended by the commission of inquiry. The Special Rapporteur hopes that it will contribute to resolving this painful issue. The support of all Member States and other relevant stakeholders in the implementation of this strategy will be paramount.

II. Latest major developments

5. Since the Special Rapporteur's last report to the Human Rights Council, in June 2014, there have been several important and unprecedented developments pertaining to the human rights situation in the Democratic People's Republic of Korea.

A. Temporary engagement with the international community

6. In the second half of 2014, the Democratic People's Republic of Korea showed a welcome initial sign of being disposed to engage with the international community on human rights, most likely prompted by the findings of the commission of inquiry and the then upcoming debate in the General Assembly on the situation of human rights in the Democratic People's Republic of Korea.

7. During that period, the Government of the Democratic People's Republic of Korea, for the first time, invited the United Nations High Commissioner for Human Rights to visit the country and indicated its interest in receiving technical assistance from his Office (see sect. II.C below). In addition, the Government resumed dialogue with the European Union after several years, and extended an invitation to the Special Representative for Human Rights to visit the country. It also released three nationals of the United States of America detained on its territory.

8. In September 2014, during the twenty-seventh session of the Human Rights Council, the Government of the Democratic People's Republic of Korea announced that it had accepted 113 recommendations out of the 268 made in the context of its second universal periodic review, held in May 2014. Most of the recommendations accepted pertained to the fulfilment of economic and social rights (the rights to food, water and sanitation, health and education) and the rights of vulnerable groups (women, children and people with disabilities).[1] This was a notable improvement over the lack of collaboration extended during and after the first cycle of the review. As with the recommendations accepted under the first cycle, the Special Rapporteur believes that these new recommendations present tangible opportunities for engagement by Member States and all parties concerned, including United Nations agencies and civil society, to facilitate and verify their implementation. The Government failed, however, to accept any recommendations relating to the findings of the commission of inquiry, which the Special Rapporteur suggests is indicative of the "reality gap" in the engagement of the Democratic People's Republic of Korea with the Council.

9. On 27 October 2014, on the eve of the presentation of his annual report to the Third Committee of the General Assembly, the Special Rapporteur met, at his request, a delegation of senior officials from the Democratic People's Republic of Korea. This was the first time that officials from the Democratic People's Republic of Korea had agreed to meet the mandate holder since the establishment of the mandate a decade previously. During the meeting, the senior officials invited the Special Rapporteur to undertake a country visit in the near future, under the condition, however, that two operative paragraphs contained in the draft resolution on the situation of human rights in the Democratic People's Republic of Korea be removed. The first paragraph (para. 7) related to the accountability for crimes against humanity of the highest authorities in the country. The second paragraph (para. 8) pertained to a possible referral by the Security Council of the situation in the Democratic People's Republic of Korea to the International Criminal Court. The Special Rapporteur, who has made repeated requests to be invited to visit the country, responded that he should be invited irrespective of the adoption of the resolution.

10. On 18 November 2014, the Third Committee of the General Assembly adopted a resolution on the situation of human rights in the Democratic People's Republic of Korea with an overwhelmingly large majority: 111 Member States voted in favour, 19 against and 55 abstained. An amendment introduced to remove the aforementioned operative paragraphs was rejected by a majority of 77 votes, with 40 votes in favour and 50 abstentions.

11. In two letters dated 24 and 28 November 2014 addressed to the Secretary-General, the Government of the Democratic People's Republic of Korea firmly denounced the adoption of the resolution.[2]

12. In a letter dated 5 December 2014 addressed to the President of the Security Council, 10 members of the Security Council requested that the situation in the Democratic People's Republic of Korea be formally placed on the Council's agenda, and in that regard also requested a meeting on the situation. They stated that they were "particularly concerned by the scale and gravity of human rights violations detailed in the comprehensive report undertaken by the Human Rights Council commission of inquiry … These violations

[1] Report of the commission of inquiry on human rights in the Democratic People's Republic of Korea (A/HRC/25/63).

[2] Annexes to the letters dated 24 and 28 November 2014 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the Secretary-General (A/69/616–S/2014/849 and A/69/623–S/2014/855).

threaten to have a destabilizing impact on the region and the maintenance of international peace and security".[3] The Government of the Democratic People's Republic of Korea strongly opposed those requests in a letter dated 15 December addressed to the President of the Security Council.[4]

13. On 18 December 2014, the General Assembly adopted in plenary session the resolution on the situation of human rights in the Democratic People's Republic of Korea, with an increased majority: 116 Member States voted in favour, 20 against and 53 abstained (resolution 69/188).

14. On 22 December 2014, the Security Council held a meeting to discuss the situation in the Democratic People's Republic of Korea. On behalf of the United Nations High Commissioner for Human Rights, the Assistant Secretary-General for Human Rights briefed the Council on the findings of the commission of inquiry, stressing that "rarely has such an extensive charge-sheet of international crimes been brought to the Council's attention".[5] The Council voted to include the issue on its agenda (11 in favour; 2 against; 2 abstentions), paving the way for regular meetings on the issue. Member States refrained at that stage from making explicit calls for a referral of the situation in the Democratic People's Republic of Korea to the International Criminal Court.

15. In the aftermath of those two key developments in the General Assembly and the Security Council, the Government of the Democratic People's Republic of Korea indicated that it would suspend dialogue with the High Commissioner for Human Rights and the Special Rapporteur, and that the respective invitations extended to visit the country were being withdrawn. The Special Rapporteur finds this stance deeply regrettable. He urges the Government to revisit its decision without delay, and remains ready to visit the Democratic People's Republic of Korea as soon as possible to engage in further constructive dialogue on issues of concern.

B. Main recent developments in neighbouring countries affected

1. Republic of Korea

16. The Special Rapporteur paid a visit to the Republic of Korea from 10 to 14 November 2014. During his visit, he met with senior officials from the Ministry for Foreign Affairs, the Ministry of Justice, the Ministry of Unification, the Office for National Security, and the National Intelligence Service, and members of the Human Rights Forum and of the Foreign Affairs and Unification Committee of the National Assembly. He also met with the Mayor of Seoul and with representatives of the National Human Rights Commission of the Republic of Korea, non-governmental organizations and the diplomatic community.

17. The Special Rapporteur observed during his visit that national aspirations for reunification of the two Koreas into a single nation continued to be as strong as ever. In that context, he was briefed on the establishment in July 2014 of the Presidential Committee for

[3] Letter dated 5 December 2014 from the representatives of Australia, Chile, France, Jordan, Lithuania, Luxembourg, the Republic of Korea, Rwanda, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the President of the Security Council (S/2014/872).

[4] Letter dated 15 December 2014 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council (S/2014/896).

[5] Verbatim record of Security Council meeting of 22 December 2014 (S/PV.7353), p. 5.

Unification Preparation. This body is tasked with proposing ways to improve inter-Korean cooperation and prepare for peaceful unification. It recently proposed to the Democratic People's Republic of Korea the holding of an "inter-Korean dialogue"[6] to discuss issues of mutual interest, a proposal that the Special Rapporteur welcomes. He similarly welcomes the announcement made in January 2015 by the Supreme Leader of the Democratic People's Republic of Korea that he would hold talks with the President of the Republic of Korea. This is an encouraging development as dialogue between the two countries and increased contact between people of both Koreas is of the utmost importance, in line with the commission of inquiry's recommendations.[7]

18. During his visit, the Special Rapporteur was informed that dialogue between the Republic of Korea and the Democratic People's Republic of Korea on the reunion of separated families had been interrupted once again by the latter. He hopes that the forthcoming talks between the two countries will enable progress on this key issue to resume, in the interest of those families. He welcomes the fact that the Republic of Korea had continued to provide humanitarian assistance prior to the announcement of the resumption of talks.

19. While on mission in the Republic of Korea, the Special Rapporteur's attention was drawn to the issue of nationals of the Democratic People's Republic of Korea being sent abroad by their Government to work under conditions that reportedly amount to forced labour. This is an issue of serious concern which the Special Rapporteur will examine in future reports.

2. Japan

20. The Special Rapporteur visited Japan from 19 to 23 January 2015. During his visit, he met with senior officials from the Ministry for Foreign Affairs, the Ministry for the Abduction Issue, the National Police, the Cabinet Intelligence and Research Office, and the Association of Members of Parliament dealing with abductions. He also met with members of the Association of Families of Abductees and other representatives of civil society, as well as members of the diplomatic community.

21. The Special Rapporteur was informed by the Japanese authorities that, in addition to the 12 known cases of abductees remaining to be returned to Japan, the national police agency was currently looking into 881 possible abduction cases attributable to the Government of the Democratic People's Republic of Korea over the years. They represent 21 possible cases that are additional to the previous figure given in April 2014 by the Japanese authorities.

22. The Special Rapporteur was briefed on the latest developments in relation to the bilateral dialogue started in 2014 between the Governments of the Democratic People's Republic of Korea and Japan. In May 2014, the Democratic People's Republic of Korea agreed to conduct a comprehensive, full-scale survey of all Japanese nationals in the country, including the remains and graves of the Japanese who had died on its territory before and after 1945 and the remaining Japanese spouses, victims of abduction and the missing. It also agreed to keep Japan constantly updated on the results of the investigation. In return, Japan agreed to ease a number of sanctions it had imposed on the Democratic People's Republic of Korea. In October 2014, a delegation of senior Japanese officials went to Pyongyang to be apprised of the latest information in relation to the survey undertaken.

[6] Press release from the Ministry of Unification, "New year plans on foundation building for unification by Presidential Committee for Unification Preparation" (30 December 2014), available from http://eng.unikorea.go.kr/content.do?cmsid=1834&cid=42033&mode=view.

[7] A/HRC/25/63, para. 91.

However, the meeting was reported to have been unsatisfactory. While welcoming the dialogue between the two countries, the Special Rapporteur regrets that it has been stalled for several months by the Democratic People's Republic of Korea, which is due to present a report on the outcome of its survey by July 2015. The Special Rapporteur calls on the Government of the Democratic People's Republic of Korea genuinely to abide by the terms of the bilateral agreement with Japan.

23. The Special Rapporteur looks forward to the international symposium on the issue of abductions being organized by the Government of Japan in May in New York. It will be similar to an event held on the margins of the twenty-seventh session of the Human Rights Council in September 2014. Such events contribute to maintaining the visibility and international understanding of the issue of international abductions carried out by the Government of the Democratic People's Republic of Korea and are important elements of the strategy developed by the Special Rapporteur (see sect. III below).

3. China

24. On the margins of the sixty-ninth session of the General Assembly, the Special Rapporteur met with officials from China to discuss the issue of nationals of the Democratic People's Republic of Korea who, in their attempt to flee the country, had crossed the border into China, and the issue of how to prevent their being sent back to their country of origin, in breach of the provisions of international law on non-refoulement. He remains keen to engage in a constructive dialogue with the Government of China to seek a sustainable solution to this serious ongoing problem, and to achieve the overall objective of bringing concrete meaningful changes to the human rights situation in the Democratic People's Republic of Korea.

C. Efforts by the Office of the United Nations High Commissioner for Human Rights

1. Dialogue on technical cooperation with the Government of the Democratic People's Republic of Korea

25. In September 2014, for the first time, the Government of the Democratic People's Republic of Korea expressed interest in receiving technical assistance from the Office of the United Nations High Commissioner for Human Rights. Subsequent discussions were held between the Government and the Office on the possible scope of such assistance. While the Special Rapporteur welcomes this positive development, he regrets that the Government decided to suspend its dialogue with the Office on the eve of the Security Council meeting of 22 December 2014.

26. He calls on the Democratic People's Republic of Korea to resume dialogue with the Office of the United Nations High Commissioner for Human Rights on technical cooperation as soon as possible. He stresses that such dialogue should not be linked to any political considerations, but be undertaken with a view to the implementation of the country's international human rights obligations, including the commitments made during the universal periodic review. He hopes that the Government will change its position and grant the Office access to the country to assess the needs on the ground and explore with the Government possible avenues for substantive and meaningful cooperation.

2. Establishment of a field-based structure

27. The Human Rights Council, in its resolution 25/25, provided for the establishment by the Office of the United Nations High Commissioner for Human Rights of a field-based structure tasked with strengthening the monitoring and documentation of the situation of

human rights in the Democratic People's Republic of Korea, enhancing the engagement and capacity-building of various stakeholders and maintaining the visibility of the situation. The Special Rapporteur welcomes all the efforts made by the Office and partners towards the establishment of the structure. At the time of preparation of the present report, the Office is finalizing administrative matters pertaining to the establishment of the field-based structure with the Government of the Republic of Korea. The Special Rapporteur welcomes the progress made on this initiative, and looks forward to collaborating with the field-based structure in the very near future.

28. The Special Rapporteur was pleased to hear during his meetings with officials and civil society in both the Republic of Korea and Japan about their eagerness to collaborate with the field-based structure. He again calls upon all stakeholders to extend their full cooperation to the structure in the accomplishment of its important work. In addition, he encourages the Human Rights Council to fully support the structure and ensure that it can fulfil its challenging mandate adequately.

III. Strategy on addressing the issue of international abductions, enforced disappearances and related matters

A. Background

29. The commission of inquiry on human rights in the Democratic People's Republic of Korea, following a thorough and careful investigation, found that "since 1950, the Democratic People's Republic of Korea has engaged in the systematic abduction, denial of repatriation and subsequent enforced disappearance of persons from other countries on a large scale and as a matter of State policy".[8]

30. The commission of inquiry estimated that well over 200,000 persons, including children, had been taken from other countries to the Democratic People's Republic of Korea, and that many had never been heard of again. This figure included mostly those who had left for the Democratic People's Republic of Korea in the context of the Korean War.[9] However, agents of the Democratic People's Republic of Korea had abducted and disappeared hundreds of nationals from Japan, the Republic of Korea and other countries between the 1960s and 1980s.[10] Since the 1990s, they are believed to have abducted several individuals from Chinese territory, including nationals of China and the Republic of Korea and a former Japanese national.[11] In addition to victims from China, Japan and the Republic of Korea, the commission of inquiry recorded cases of abductions and enforced disappearances of nationals of Lebanon, Malaysia, Romania, Singapore, Thailand and possibly other countries.[12]

31. The commission of inquiry found that such violations amounted to crimes against humanity under international criminal law.[13] It also found that those cases constituted

[8] Ibid., para. 64.
[9] Ibid.
[10] Ibid., para. 66.
[11] Ibid., para. 72.
[12] The commission of inquiry considered it possible that other foreigners, especially foreign women, from France, Italy, the Netherlands and other unspecified European countries, and the Middle East, were among the abductees (see Report of the detailed findings of the commission of inquiry (A/HRC/25/CPR.1), para. 975).
[13] A/HRC/25/63, paras. 76 and 79.

ongoing violations "because the policies, institutions and patterns of impunity that lie at their heart remain in place".[14] Such findings have important international justice implications, including the possible application of the jurisdiction of the International Criminal Court.

32. The commission of inquiry subsequently recommended that the Special Rapporteur develop a strategy, involving all United Nations human rights mechanisms concerned, to address the issue of international abductions, enforced disappearances and related matters coherently and without delay. It also recommended that Member States afford full cooperation to ensure the implementation of such a strategy.[15]

33. In the light of the number of countries whose nationals have been abducted and disappeared, the Special Rapporteur believes that an international approach to the issue is now required. He welcomes the various bilateral efforts undertaken by some countries so far, which should be sustained. However, he stresses that it is also fundamental to generate broad support from the international community to address the issue of international abductions, enforced disappearances and related matters more robustly and comprehensively.

34. The Special Rapporteur pays his deepest respect to the families of abductees and enforced disappearances that he has met in the Republic of Korea and Japan over the years. He has been greatly impressed and moved by their dignified composure and unfailing courage over several decades in their search for truth, justice and the return of their loved ones. There is a real sense of urgency to solve this matter once and for all as the victims — those who have survived — and their families are, for the most part, well advanced in years.

35. In this context, the Special Rapporteur would like to propose the following elements of a strategy aimed at addressing the issue of international abductions and enforced disappearances committed by the Government of the Democratic People's Republic of Korea, and related matters.

B. Purpose

36. The present strategy builds on recent major developments in the Human Rights Council, General Assembly and Security Council on the situation in the Democratic People's Republic of Korea, with significantly increased scrutiny by the international community of the actions of the Government of the Democratic People's Republic of Korea. It seeks to maintain momentum on, and the visibility of, the issue of international abductions, enforced disappearances and related matters in the international arena, and thereby sustain continuous and targeted pressure on the authorities of the Democratic People's Republic of Korea to resolve the issue to the satisfaction of the victims, their families and the international community.

37. The strategy is aimed at eventually shedding light on all cases of abductions and enforced disappearances allegedly committed by agents of the Democratic People's Republic of Korea; securing the immediate return of those who are still alive, together with their descendants, to their respective countries of origin; facilitating the uniting of separated families without delay; identifying and repatriating the physical remains of those who have perished, in close cooperation with their families and nations of origin; ensuring that victims of abduction and enforced disappearance, as well as their families, obtain redress

[14] Ibid., para. 76.
[15] Ibid., para. 94 (d).

and can enjoy their right to adequate compensation; and holding the alleged perpetrators accountable, bearing in mind the principle of command and superior responsibility under international criminal law.

38. To that end, the Special Rapporteur proposes a multitrack strategy which combines outreach to the Democratic People's Republic of Korea at the bilateral level on different fronts, while maintaining pressure at the international level. It is not intended to be exhaustive and the Special Rapporteur would welcome further constructive initiatives in the pursuit of those goals.

39. The Special Rapporteur makes himself available to support the strategy, with the support of the field-based structure of the Office of the United Nations High Commissioner for Human Rights that is being established in Seoul, Republic of Korea. This structure will play a pivotal role in ensuring the implementation of several elements of the strategy, in accordance with the mandate of the structure outlined by the Human Rights Council in its resolution 25/25.

C. Multitrack strategy

1. Comprehensive mapping of international abductions and enforced disappearances

40. Despite tight time constraints, the commission of inquiry recorded a significant number of cases of abduction and enforced disappearance of nationals from several countries. It did not rule out cases from a number of other countries. In this regard, the Special Rapporteur believes that a comprehensive mapping of international abductions and enforced disappearances, believed to have been committed by agents of the Democratic People's Republic of Korea, should be undertaken in the long term to grasp the full scale and gravity of the issue and contribute to achieving accountability for such violations. To this end, the Special Rapporteur encourages all Member States affected by the issue, as well as civil society organizations and other stakeholders, to share with the Office of the United Nations High Commissioner for Human Rights detailed information on cases of abduction, enforced disappearance and related matters, including detailed lists of confirmed and potential victims. These submissions can be treated confidentially whenever requested.

41. The Special Rapporteur also requests the Member States concerned to grant him and the Office of the United Nations High Commissioner for Human Rights access to potential witnesses of abductions and enforced disappearances, especially those escapees who may have information relevant to the issue.

2. Sustained action by the Security Council

42. The Special Rapporteur welcomes the fact that the human rights situation in the Democratic People's Republic of Korea is now firmly placed on the Security Council's agenda.[16] Already in the discussion held by the Security Council on 22 December 2014, the Assistant Secretary-General for Human Rights and several Council members highlighted the importance of the abduction issue. Regular action by the single most powerful United Nations entity will be of paramount importance in maintaining momentum on the issue and pressure on the authorities of the Democratic People's Republic of Korea. In this context, the Special Rapporteur calls on the President and members of the Security Council to bring the issue forward to the Council's agenda on a regular basis, preferably at least twice per year. He believes that, given its international peace and security dimensions, the issue of

[16] See S/2014/872.

international abductions, enforced disappearances and related matters should be an important focus for the Security Council.

43. Likewise, the Special Rapporteur hopes the Security Council will pay particular attention to this issue in its discussions on other themes, for instance in the framework of Council resolution 2122 (2013) on women, peace and security (para. 2 (a), (b) and (d)).

44. Importantly, the Special Rapporteur sees future meetings of the Security Council as a key platform for relatives of victims of abduction and enforced disappearance, in particular female victims, to amplify their calls for justice and accountability. This would also be in line with Security Council resolution 2122 (2013), which highlights the importance of interaction of civil society, including women's organizations, with members of the Council at headquarters and during Council field missions (para. 6).

45. Finally, the Special Rapporteur is available to brief the Security Council himself on human rights developments in the Democratic People's Republic of Korea, including on the issue of international abductions, enforced disappearances and related matters.

3. Sustained action by the Human Rights Council and the General Assembly

46. In conjunction with action by the Security Council, the Special Rapporteur firmly believes that the Human Rights Council and the General Assembly can also continue to add dimensions to international understanding and advocacy of the issue of international abductions, enforced disappearances and related matters.

47. In this endeavour, for instance, a panel discussion held during a future Human Rights Council session could serve as a prominent platform to bring together independent experts, representatives of families concerned, and other civil society actors to discuss this issue. Furthermore, the Special Rapporteur has always found useful the holding of side events on a specific issue on the margins of sessions of the Human Rights Council and the General Assembly. He encourages Member States and civil society to continue organizing such events on a regular basis. They could contribute to informing the international community and the media at strategic times about the dire situation in the Democratic People's Republic of Korea.

4. Targeted action by the future human rights contact group

48. The commission of inquiry on the situation of human rights in the Democratic People's Republic of Korea recommended in its report that:

> States that have historically friendly ties with the Democratic People's Republic of Korea, major donors and potential donors, as well as those States already engaged with the Democratic People's Republic of Korea in the framework of the six-party talks, should form a human rights contact group to raise concerns about the situation of human rights in the Democratic People's Republic of Korea and to provide support for initiatives to improve it.[17]

49. The Special Rapporteur notes the wide range of Member States that have been highlighting the issue of abductions and enforced disappearances in their statements during Human Rights Council and General Assembly debates, including some that do not traditionally support the related resolutions. He believes that concerted action by a committed group of Member States to engage the Democratic People's Republic of Korea on the issue of international abductions, enforced disappearances and related matters could make a significant difference.

[17] A/HRC/25/63, para. 94 (h).

50. The Special Rapporteur stands ready to brief interested and concerned Member States in this regard.

5. International conference on missing persons

51. In order to maintain the momentum and visibility achieved by the latest General Assembly resolution and action by the Security Council, the Special Rapporteur encourages Member States to consider sponsoring an international conference on the issue of missing persons in general, which would include the issue of international abductions and enforced disappearances carried out by agents of the Democratic People's Republic of Korea, and the subject of separated families. The Government of the Democratic People's Republic of Korea could be invited to attend this conference to give it another opportunity to engage meaningfully on the issue.

52. The Special Rapporteur suggests that the event take place on the margins of a future General Assembly session, preferably during the high-level segment, with the participation of, inter alia, victims and relatives of abductees and of the disappeared, Member States concerned by the issue, senior United Nations officials, relevant United Nations human rights mechanisms and representatives of civil society, including members of non-governmental organizations and academics focusing on the issue. The objective of this conference would be to produce a common declaration of concern as well as an action-oriented framework for information-sharing, coordination of investigative efforts and engagement with the Democratic People's Republic of Korea.

6. Active role of an international civil society coalition

53. The important role of civil society in articulating concerns and mobilizing attention on the issue of abductions, enforced disappearances and related matters cannot be emphasized enough. In this regard, the Special Rapporteur welcomes the dedicated work undertaken by families of victims and non-governmental organizations from all countries concerned by the issue, in many regions of the world. He strongly encourages them to actively join forces in a common campaign, both domestically and internationally, to seek truth and justice and decisively bring closure to this tragedy.

54. Families of victims and non-governmental organizations have a great deal of information and experience to share with each other, and therefore learn from each other, on how to cope with, and plan a strategy on, the issue. The Special Rapporteur is mindful that in a number of countries families of victims and non-governmental organizations are divided on how to approach the issue. Some have adopted a conservative approach, aligning themselves with the position of their Government. Others favour a more proactive approach on the issue. While the Special Rapporteur respects both those positions, he nevertheless wishes to stress the utmost importance of all civil society actors speaking with one voice, with a view to amplifying their message. This will have a ricochet effect in mobilizing Member States and other stakeholders to take action on the issue.

55. In this process, it is important to include regional coalitions and international organizations working on the issue of abductions, enforced disappearances and related matters, which can contribute their expertise and years of experience in dealing with the issue.

56. Mindful of the specificities of each region, the Special Rapporteur thinks that non-governmental organizations from countries in other regions that have been dealing with disappearance issues could be consulted in this endeavour. They could also share their own experiences and strategies, and inspire and offer solidarity to one another.

57. In this endeavour, the field-based structure of the Office of the United Nations High Commissioner for Human Rights can hopefully play a key role in facilitating exchanges

among all civil society networks. It will also contribute, in accordance with its mandate, to enhancing the capacity of the organizations working on the issue.

7. Communication, advocacy and outreach initiatives

58. Sustained communication, advocacy and outreach initiatives are required to maintain the visibility of the situation of human rights in the Democratic People's Republic of Korea. They can help keep up the momentum of ongoing efforts, further engage all stakeholders and raise awareness among the wider public about the plight and sufferings of the victims. The field-based structure of the Office of the United Nations High Commissioner for Human Rights, as mandated by the Human Rights Council in its resolution 25/25, will be instrumental in piloting such initiatives.

59. In particular, the Special Rapporteur sees new communication capacity as a key tool for raising and maintaining the visibility of the issue of international abductions, enforced disappearances and related matters at the international, regional and local levels. It will be very important to reach out to, and mobilize, the general public in the countries affected by the issue and beyond. Furthermore, affected families, if they choose to, can utilize online platforms to share information, organize joint advocacy efforts from different locations and engage with human rights mechanisms on the issue in a more strategic and effective manner in order to maximize the impact of their efforts. To that end, communication, advocacy and outreach initiatives should be undertaken in relevant languages, in particular in Korean and Japanese.

60. The use of social media and new communication technologies will give further prominence to the issue and will help reach out to young people who may not be aware of or feel concerned by it, and mobilize netizens worldwide. Should the issue not be resolved in the near future, new generations will at least be informed and mobilized to continue the struggle. In addressing the issue, it is therefore crucial to target in particular youth networks in all affected countries.

61. Importantly, this new communication capacity will allow victims in the Democratic People's Republic of Korea and their relatives to continue to hold out hope that the sustained concern of the international community will eventually lead to relief of their suffering.

8. Active role of regional mechanisms

62. The Asian and Pacific region does not unfortunately have a regional human rights arrangement that covers the situation in the Democratic People's Republic of Korea, although the country previously participated in some regional human rights dialogues organized by the Office of the United Nations High Commissioner for Human Rights. There are, however, a number of important platforms for dialogue on regional issues in which the Democratic People's Republic of Korea regularly participates, or in which issues relating to the Democratic People's Republic of Korea and security on the Korean peninsula are discussed.

63. These platforms include the Regional Forum of the Association of Southeast Asian Nations (ASEAN), which has met annually since 1994 and has the goal of fostering constructive dialogue and consultation on political and security issues of common interest and concern, and of contributing to efforts towards confidence-building and preventive diplomacy in the Asian and Pacific region. The Democratic People's Republic of Korea is currently a participant in the ASEAN Regional Forum, along with Australia, Bangladesh, Brunei Darussalam, Cambodia, Canada, China, the European Union, India, Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, Mongolia, Myanmar, New Zealand, Pakistan, Papua New Guinea, the Philippines, the Republic of Korea, the Russian

Federation, Singapore, Sri Lanka, Thailand, Timor-Leste, the United States of America and Viet Nam. In addition, there are a number of other intergovernmental dialogues and summits in the region, in particular the East Asia Summit and the ASEAN dialogue arrangements.

64. The above-mentioned platforms could be important venues for the discussion and development of common action on human rights issues in the Democratic People's Republic of Korea, such as international abductions, enforced disappearances and related matters, which have had a negative impact on the regional security situation.

9. Continuous use of United Nations human rights mechanisms

65. Another avenue for exerting pressure on the Government of the Democratic People's Republic of Korea to shed light on abductions, enforced disappearances and related matters is the use of relevant United Nations human rights mechanisms, both Charter- and treaty-based.

(a) Charter-based mechanisms

(i) *Special procedures mandate holders*

66. The Special Rapporteur cautions against seeing his mandate in isolation when looking at the human rights situation in the Democratic People's Republic of Korea. In his view, country and thematic special procedures mandates are mutually reinforcing, creating positive synergies between themselves and complementing each other. By the broad range of issues they cover, and the different tools available to them in the fulfilment of their functions (e.g. communications, press statements, country visits, thematic reporting), thematic special procedures mandate holders can add substantive leverage to seeking responses from the authorities of the Democratic People's Republic of Korea on cases brought to their attention.

67. The thematic mechanism most relevant to the issue of international abductions, enforced disappearances and related matters is the Working Group on Enforced or Involuntary Disappearances. It was entrusted with the double mandate to (a) assist families in determining the fate or whereabouts of their disappeared relatives who are placed outside the protection of the law and (b) monitor States' compliance with their obligations deriving from the Declaration on the Protection of All Persons from Enforced or Involuntary Disappearance and existing international rules, and to provide States with assistance in the implementation of those norms.[18] The Special Rapporteur welcomes the numerous communications issued by the Working Group to the Government of the Democratic People's Republic of Korea,[19] as well as its public advocacy. He also welcomes the letters sent by the Working Group to the President of the Human Rights Council, the President of the General Assembly, the President of the Security Council and the Secretary-General "to request the adoption of any appropriate action that they may deem appropriate"[20] in relation to the issue of abductions and enforced disappearances carried out by the Democratic People's Republic of Korea. He encourages the Working Group to request an invitation to visit the Democratic People's Republic of Korea and countries affected by the issue.

68. Other thematic mandates are also particularly relevant to the issue of international abductions, enforced disappearances and related matters, as illustrated by the report of the

[18] A/HRC/WGEID/102/2, paras. 2 and 4.

[19] A total of 47 communications at the time of drafting the present report (see A/HRC/27/49, annex II, p. 29).

[20] A/HRC/27/49, para. 32.

commission of inquiry,[21] in particular the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on trafficking in persons, especially in women and children, and the Working Group on Arbitrary Detention. The Special Rapporteur encourages these mandate holders to raise, or continue to raise, the issue with the Government of the Democratic People's Republic of Korea within the scope of their respective mandates, including by seeking invitations to visit the country.

69. The Special Rapporteur urges the Government of the Democratic People's Republic of Korea to respond promptly and thoroughly to all the concerns raised by special procedures mandate holders over the years on the issue of abductions, enforced disappearances and related matters. In this regard, he reminds the Government of the commitment it made under the second cycle of the universal periodic review to cooperate with the special procedures of the Human Rights Council.[22]

(ii) *Universal periodic review*

70. During the twenty-seventh session of the Human Rights Council in September 2014, the Government of the Democratic People's Republic of Korea announced that it had accepted 113 of the 268 recommendations made in the framework of its second universal periodic review. This is a notable improvement on the lack of collaboration extended during and after its first review. However, the Government very regrettably rejected all recommendations relating to the findings of the commission of inquiry, including those pertaining to international abductions and enforced disappearances. The Special Rapporteur finds this continuous state of denial deeply disconcerting. He urges Member States, in their bilateral efforts to follow up on the universal periodic review of the Democratic People's Republic of Korea, not to lose sight of those rejected recommendations and to continue to raise the matter.

71. Prior to the second cycle of the universal periodic review, the Government of the Democratic People's Republic of Korea had indicated that it was in a position to accept a number of recommendations pertaining to the issue of separated families which had been made during the first review, in December 2009:

> Guarantee separated families' fundamental right to know the fate of their family members across the border and to communicate and regularly meet together;
>
> Do everything possible, in cooperation with the Republic of Korea, to ensure that the maximum number of meetings of separated families is organized;
>
> Take concrete steps to continue the process of family reunification, because for the elder generation even a delay of one or two years means that their chance of seeing their relatives may be lost forever;
>
> Adopt measures to facilitate family reunification as recommended by the Special Rapporteur on [the situation of human rights in the Democratic People's Republic of Korea].[23]

72. The Special Rapporteur welcomes this commitment and calls on Member States and other stakeholders to seek to engage the Government of the Democratic People's Republic of Korea to follow up on these recommendations, which have not been implemented to

[21] A/HRC/25/63, paras. 64–73.

[22] See A/HRC/27/10, paras. 124.17, 124.52, 124.61, 124.65 and 124.66, and A/HRC/27/10/Add.1, para. 10 (a).

[23] A/HRC/13/13, paras. 90.75–78.

date. As recommended by the commission of inquiry, separated families should be allowed to unite, "including by allowing citizens to travel or emigrate where they choose"; and such persons should immediately be provided with "facilities for unmonitored communications by way of mail, telephone, e-mail and any other means of communication".[24]

(b) Treaty-based mechanisms

73. The Democratic People's Republic of Korea is party to several international human rights instruments. Three of them are of particular relevance to the issue of international abductions, enforced disappearances and related matters: the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

74. The Government accepted a series of recommendations made in the context of the first and second cycles of the universal periodic review to submit reports to United Nations human rights treaty bodies, notably the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women.[25] It also accepted a number of other recommendations under the universal periodic review concerning the rights of children, women and persons with disabilities.[26]

75. However, the reports of the Democratic People's Republic of Korea to the Human Rights Committee, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women are all overdue.[27] The Government should be reminded of its obligation to submit timely reports and encouraged to seek international assistance in this regard.

76. In addition, the Special Rapporteur calls on the treaty bodies to challenge the Democratic People's Republic of Korea on the issue of abductions, enforced disappearances and related matters under their respective mandates.

77. Finally, the international community should also urge the Democratic People's Republic of Korea to sign and ratify the most relevant international human rights treaty relating to the present issue: the International Convention for the Protection of All Persons from Enforced Disappearance.

10. Closure and accountability

78. Achieving closure and accountability for the abductions and enforced disappearances carried out by the Government of the Democratic People's Republic of Korea is the ultimate goal of this strategy. Sooner or later the Government will have to answer for its actions, in particular in the cases of abduction and enforced disappearance, which have caused unspeakable suffering to the victims and their families.

79. The commission of inquiry found that those cases constituted crimes against humanity under international criminal law. Although the Democratic People's Republic of Korea has not included crimes against humanity in its national criminal law and is not a party to the Rome Statute of the International Criminal Court, perpetrators of such crimes can be held responsible on the basis of international customary law. Since the cases of

[24] A/HRC/25/63, para. 89 (o).

[25] First cycle: A/HRC/13/13, paras. 90.3 and 90.41; second cycle: A/HRC/27/10, para. 124.64.

[26] First cycle: A/HRC/13/13, para. 90.98; second cycle: A/HRC/27/10, paras. 124.30, 124.31, 124.34, 124.36, 124.178 and 124.179.

[27] Report due to the Human Rights Committee since 2004; report due to the Committee on the Rights of the Child since 2012; report due to the Committee on the Elimination of Discrimination against Women since 2006.

abduction and enforced disappearance constitute ongoing violations, the International Criminal Court is competent to prosecute the perpetrators.

80. The Special Rapporteur remains convinced that the Security Council should refer the situation in the Democratic People's Republic of Korea to the International Criminal Court, as recommended by the commission of inquiry and subsequently encouraged by the General Assembly.[28] In that eventuality, the evidence and documentation gathered by the commission of inquiry on abductions and enforced disappearances, and the future investigations of the field-based structure of the Office of the United Nations High Commissioner for Human Rights, will be of great relevance and value to the prosecutor's work.

81. The General Assembly also encouraged the Security Council, as recommended by the commission of inquiry, to consider the scope for effective targeted sanctions against those who appear to be most responsible for acts that the commission deemed to constitute crimes against humanity. The Special Rapporteur welcomes the steps some Member States have begun to take on a bilateral basis in this direction.

82. In this context, the Special Rapporteur recalls the principle of command and superior responsibility under international criminal law, whereby military commanders and civil superiors can incur personal criminal responsibility for failing to prevent and repress crimes against humanity committed by persons under their effective control.

83. Furthermore, the Special Rapporteur calls on Member States to exercise universal jurisdiction in the event that any relevant individuals fall under their jurisdiction, and, in accordance with their national legal provisions, to investigate and prosecute the perpetrators in cases of abduction and enforced disappearance.

84. Finally, should the two Koreas reunite one day, the importance of justice and accountability for the cases of abduction and enforced disappearance should not be overlooked in the peace and reconciliation process that would ensue. Any transitional justice process should seek the truth and ensure accountability and redress for the victims. In this regard, the evidence and documentation gathered by the commission of inquiry and the field-based structure will again prove most pertinent.

IV. Conclusion and recommendations

85. **The commission of inquiry on the situation of human rights in the Democratic People's Republic of Korea brought the focus on the human rights situation in the country to an unprecedented new level. It triggered a welcome, though temporary, engagement by the Government of the Democratic People's Republic of Korea with the international community. It is highly regrettable that the Government subsequently decided to suspend such dialogue. This posture of isolation is no longer sustainable.**

86. **In this context, the Special Rapporteur reiterates that a two-track strategy should be pursued when addressing the human rights situation in the Democratic People's Republic of Korea: undertaking efforts to ensure accountability for those responsible for serious human rights violations, while continuously seeking engagement with the authorities to bring relief to the people of the Democratic People's Republic of Korea.**

[28] See A/HRC/25/63, para. 94 (a), and General Assembly resolution 69/188, para. 8.

87. It is more than ever essential at the present juncture that the international community redouble its efforts to effect meaningful changes in the Democratic People's Republic of Korea by addressing the deeply worrying human rights situation in the country, in particular with regard to the issue of international abductions, enforced disappearances and related matters. The international community owes it to all the victims and their relatives who have endured enough suffering, and to the people of both Koreas in their hopes for a peaceful future.

88. In this regard, the Special Rapporteur wishes to make the following series of recommendations.

89. The Special Rapporteur calls upon the Human Rights Council to:

(a) Reiterate its absolute condemnation of the longstanding and ongoing systematic, widespread and gross human rights violations and other human rights abuses committed in the Democratic People's Republic of Korea;

(b) Affirm the responsibility of the international community to protect the people of the Democratic People's Republic of Korea and victims abroad from crimes against humanity, in view of the manifest failure of the Democratic People's Republic of Korea to protect its own population from such crimes;

(c) Ensure that the field-based structure of the Office of the United Nations High Commissioner for Human Rights tasked with following up on the commission of inquiry's work can function with independence, has sufficient resources and is not subjected to reprisals or threats;

(d) Urge the Government of the Democratic People's Republic of Korea to invite the Special Rapporteur to undertake a fully-fledged visit to the country as soon as possible and without any preconditions, in accordance with the terms of reference for country visits by special procedures mandate holders,[29] and more generally to cooperate with his mandate.

90. The Special Rapporteur urges the Government of the Democratic People's Republic of Korea to:

(a) Immediately halt all the human rights violations identified by the commission of inquiry in its report;

(b) Resume dialogue with, and consider reissuing the invitations extended to all the stakeholders concerned, including the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights;

(c) Engage genuinely in bilateral talks with the Republic of Korea and Japan, and abide by the terms of bilateral agreements concluded, first and foremost in the interest of the victims and their families;

(d) Cooperate with the United Nations human rights mechanisms, including the mandate of the Special Rapporteur, notably by granting them access to the country with a view to, inter alia, assisting and assessing the implementation of the recommendations accepted during the second cycle of the universal periodic review.

91. The Special Rapporteur calls on Member States to:

(a) Ensure that the Security Council holds regular briefings on the situation in the Democratic People's Republic of Korea, with the participation of the High

[29] E/CN.4/1998/45.

Commissioner for Human Rights and other relevant experts, including the Special Rapporteur;

(b) Take further steps towards achieving accountability for those responsible for serious human rights violations in the Democratic People's Republic of Korea, including through referral by the Security Council of the situation in the country to the International Criminal Court;

(c) Facilitate the work of the field-based structure and the Special Rapporteur and provide them with timely access to relevant information and potential witnesses, especially escapees, who may have information crucial to ensuring institutional and individual accountability;

(d) Engage with the Government of the Democratic People's Republic of Korea to take specific steps to facilitate and verify the implementation of the recommendations accepted during the first and second cycles of the universal periodic review;

(e) Fully involve civil society actors in Member States' efforts to address the situation in the Democratic People's Republic of Korea;

(f) Establish and activate the human rights contact group recommended by the commission of inquiry, with a view to improving the situation of human rights in the Democratic People's Republic of Korea;

(g) Protect the people from the Democratic People's Republic of Korea who have sought refuge in, or are transiting through, a Member State's territory by abiding by the principle of non-refoulement;

(h) Make use of the principle of universal jurisdiction to realize and maximize the potential deterrent effect of the findings and recommendations of the commission of inquiry and thus help to protect the population of the Democratic People's Republic of Korea from further crimes against humanity.

92. The Special Rapporteur calls on the United Nations system as a whole to address the grave human rights situation in the Democratic People's Republic of Korea in a coordinated and unified manner, in line with the Secretary-General's Human Rights Up Front strategy.

93. The Special Rapporteur calls on civil society to continue its important work in raising awareness of the human rights situation in the Democratic People's Republic of Korea, including by reporting on human rights violations committed by the Government of the Democratic People's Republic of Korea.

94. Finally, the Special Rapporteur looks forward to sustained and resolute action by all stakeholders in the implementation of his proposed strategy to address the issue of international abductions, enforced disappearances and related matters, as detailed in the present report.